IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 141 OF 2005

SHRI CHANDRAKANT PUTTU DESSAI, QUEPEM GOA ....Appellant

Versus

M/S G.N. AGARWAL PVT.LTD., MARGAO GOA ....Respondent

Mr. S. S. Kakodkar, Advocate for the appellant.

Coram:- D. D. SINHA, J.

Date:- 24th November, 2005

P.C.

Heard Mr. Kakodkar, the learned Counsel for the appellant. In the instant case, the appellant has filed the suit for specific performance of contract dated 26.6.1983 and for directions to the defendant to transfer the truck in his favour and a prayer for damages was also made in the said suit. The suit was dismissed by the trial Court and an appeal preferred by the appellant(plaintiff) against the said decision is also dismissed and, therefore, the present second appeal.

The Counsel for the appellant states that the trial Court has framed the following two issues :

(1) Whether the plaintiff has proved that he had discharged all his obligations under the agreement dated 22.6.1983 and hence was entitled to the transfer of truck no. GDT - 7852 in his favour ?

(2) Whether the plaintiff has proved that he is entitled to receive damages at the rate of Rs.600/- per day

from the date of filing of the suit till the date of transfer of vehicle in his name ?

The learned Counsel for the appellant contended that in the instant case, in view of the interim direction passed by the trial court on 21.9.87, the defendant gave the required no objection to the plaintiff on 18.1.1990. It is, therefore, contended that pursuant to the above referred interim direction of the trial Court, the grievance of the appellant to that extent was redressed. However, the claim for damages still remains which is distinct and independent than the issue No.1 which pertains to the specific performance of the contract. It is contended that the damages which the appellant is entitled to are for the period from 24.9.1987 to 18.1.1990, particularly in view of the fact that though the interim order was issued by the trial Court on 01.12.1989 thereby the defendant was directed to give no objection, he did not take any steps immediately and for the first time issued no objection on 18.1.1990 and, therefore, the plaintiff is entitled to damages for this period even though the suit of the appellant for specific performance of the agreement dated 22.6.1983 is dismissed. It is, therefore, contended that in the instant case the substantial question of law which is involved is whether after dismissal of the suit for specific performance of the agreement dated 22.6.1983, the appellant (plaintiff) is entitled for damages as claimed by the appellant (plaintiff) ?

I have considered the contentions canvassed by the learned Counsel for the appellant. At the outset, I want to express that if the suit for specific performance of the contract dated 22.6.1983 filed by the appellant wherein direction was sought againt the defendant to transfer the truck, came to be dismissed by the trial Court for want of evidence, it is not open for the appellant to claim damages. In such a situation, only on the basis of the compromise arrived at between the plaintiff and the defendant pursuant to which the direction is issued by the trial Court on 24.9.87 and NOC given by the defendadnt, however, in view of settled legal position, the question of law raised by the appellant is neither

substantial question of law nor can it be treated as a question of law.

In the circumstances, the second appeal suffers from merits and the same is dismissed in limine.

D. D. SINHA, J.

ssm.